

**County of Loudoun
Department of Building and Development**

MEMORANDUM

DATE: February 4, 2010

TO: Loudoun County Planning Commission

FROM: Laura Edmonds
Chesapeake Bay Project Manager

SUBJECT: February 11, 2010 Planning Commission Worksession:
CPAM 2009-0002 - Chesapeake Bay Preservation Act Policies,
ZOAM 2009-0004 - Amendments to the Revised 1993 Loudoun County Zoning Ordinance Necessary to Implement Chesapeake Bay Preservation Ordinance, &
DOAM 2009-0004 - Amendments to the Facilities Standards Manual Necessary to Implement Chesapeake Bay Preservation Ordinance

During the January 28, 2010 Planning Commission Public Hearing, the Planning Commission voted (9-0) to forward CPAM 2009-0002, ZOAM 2009-0004, and DOAM 2009-0004 (Chesapeake Bay Preservation Act Amendments) to a Planning Commission Worksession for further consideration. The Chesapeake Bay Preservation Act Work Program ("Work Program") includes an April 2010 Board of Supervisors ("Board") Public Hearing on the proposed amendments. Based on the timeline established by the Work Program, Staff has scheduled four Planning Commission Worksessions, as follows:

February 11, 2010: December 3, 2009 Stakeholder Roundtable Comment Matrix

February 25, 2010: January 28, 2010 Public Hearing/Planning Commission Comment Matrix

March 3, 2010: (Tentative Date) Continued Matrix Review

March 10, 2010: Finalize Board Public Hearing Drafts

Staff requests that the members of the Planning Commission bring Attachment 1 (December 3, 2009 Stakeholder Roundtable Comment Matrix), from the January 28, 2010 Planning Commission Public Hearing Staff Report, to the February 11, 2010 Worksession. In order to meet the April 2010 Board Public Hearing deadline, staff suggests that the Planning Commission consider reviewing the Matrix items by exception, such that only items requiring additional clarification or Planning Commission direction be discussed, as opposed to a line-by-line review of the matrix.

Staff is working to develop a Public Hearing/Planning Commission Comment Matrix to address new items, which were not previously addressed in the December 3, 2009 Stakeholder Roundtable Comment Matrix, for discussion at the February 25, 2010 Worksession.

Specific amendments to the drafts proposed during the February 11, February 25, and March 3 Worksessions are scheduled for review during the March 10, 2010 Worksession.

There were several topics discussed during the January 28, 2010 Planning Commission Public Hearing that require additional background prior to beginning a detailed review of the draft amendments: 1) clarification regarding the process 2) clarification regarding the flexibility in voluntarily adopting the Chesapeake Bay Preservation Act regulations, and 3) grandfathering and vesting.

Clarification regarding the process up to this point will be provided in a memo to the Planning Commission from the Chairman of the Board that is planned to be completed prior to the February 11, 2010 Worksession.

In the interim, it is important to note that the Revised General Plan (RGP) currently includes a policy related to adoption of the Chesapeake Bay Preservation Act. Existing River and Stream Corridor Policy #7 on page 5-9 of the RGP states: "The County will consider adoption of the environmental regulations of the Chesapeake Bay Preservation Act (Bay Act). The County will seek to achieve those objectives of the Bay Act that are in the best interest of the County, and will actively participate in water quality initiatives to protect and improve regional water quality." The RGP also includes existing River and Stream Corridor Overlay District (RSCOD) policies that were the basis for the Board's approval of ZMAP-2002-0014 and ZOAM-2002-0003 on January 6, 2003, that temporarily established the RSCOD.

The RSCOD replaced the Floodplain Overlay District (FOD Section 4-1500) and the Scenic Creek Valley Buffer (Section 5-1000) that were in effect prior to January 6, 2003.

The Circuit Court of Loudoun County invalidated the RSCOD amendments associated with ZMAP-2002-0014 and ZOAM-2002-0003 on March 30, 2004 due to a finding that the notice for the amendments (newspaper advertisement) was insufficient in its description of the proposed revisions. As a result of this action, the FOD and the Scenic Creek Valley Buffer went back into effect.

The Court's ruling did not have an effect on the existing RSCOD policies in the RGP and these RSCOD policies continue to be applied in the review of legislative applications and incorporated into proffers. The intent of CPAM-2009-0002 is to replace these existing RSCOD policies and expand upon existing Chesapeake Bay Act policies in a manner consistent with the April 7, 2009 Work Program and the December 15, 2009 Intent to Amend approved by the Board. The documents associated with the April 7, 2009 and December 15, 2009 meetings and the prior Board Committee of the Whole Meetings on Water Quality are available on the County website at www.loudoun.gov/chesapeakebay.

The issue of flexibility was addressed at the first Board Committee of the Whole Meeting on Water Quality on December 1, 2008. Staff from the Chesapeake Bay Local Assistance Division of the Virginia Department of Conservation and Recreation provided a presentation that clarified that while the County could select which criteria to adopt, the selected criteria needed to be

structured consistent with the Regulations in order to be compliant with the Chesapeake Bay Preservation Act. Staff has engaged in ongoing coordination with the County Attorney's office throughout the development of the draft amendments to maintain consistency with the enabling Regulations.

In regard to grandfathering and vesting, staff has obtained copies of related policies from Prince William County and Fairfax County and will prepare grandfathering options for consideration by the Board.

The County Attorney will attend the Worksession to discuss the issues of flexibility and grandfathering and vesting.